

AMOUNT \$ 0.00
FEES ISSUED 0.00
LOCAL RULE #1 0.00
WARRANT OF 0.00
FEE ISSUED 0.00
FEE 120 OR 130 0.00
PROPERTY CLK 0.00
DATE 4/11/05

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
CLERK OF COURT
APR 11 P 3:45
2005

HISAYO MURAKAMI, A 78-382-238 and
CHRISTOPHER KYRIAKIDES,

Plaintiffs,

v.

CIVIL ACTION FILE NO.

ALBERTO GONZALES, as Attorney General of the
United States; MICHAEL CHERTOFF as the
Secretary of the Department of Homeland Security;
EDUARDO AGUIRRE, JR. as Director of United
States Citizenship and Immigration Services;
DENNIS RIORDAN as District Director of the
United States Citizenship and Immigration Services
in Boston, Massachusetts; UNITED STATES
DEPARTMENT OF HOMELAND SECURITY;
and UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES,

Defendants.

CE - 10718DPW

MAGISTRATE JUDGE Sorokin

PLAINTIFFS' COMPLAINT FOR DECLARATORY RELIEF
IN THE NATURE OF MANDAMUS
AND FOR OTHER INJUNCTIVE RELIEF

INTRODUCTION

1. This action is brought by the Plaintiffs, a married couple, to compel the Defendants to adjudicate the application by Plaintiffs for the removal of the condition on Mrs. Murakami's residence. The application has been on file with the Defendants since January 23, 2003, and Defendants have refused to adjudicate the case.

PARTIES

5. Plaintiff Hisayo Murakami is a native and citizen of Japan. She became a Conditional Resident of the United States during April 2001, based on her marriage to Christopher Kyriakides, a U.S. Citizen.
6. Christopher Kyriakides is a U.S. Citizen. During May 1999, he married Mrs. Murakami. He petitioned for, and obtained, conditional residence for his wife.
7. Defendant Alberto Gonzales is Attorney General of the United States, and is charged with supervisory authority of the Department of Justice, and has the authority on questions of law in relation to the Immigration and Nationality Act 8 USC §1103(a)(1) & (g).
8. Defendant, Michael Chertoff is the Secretary of the Department of Homeland Security and charged under 8 USC §1103(a) with supervising, implementing, and enforcing the Immigration and Nationality Act.
9. Defendant Eduardo Aguirre, Jr. is the Director of United States Citizenship and Immigration Services, and charged under, 8 USC §1103(c), with the implementation of benefits under the Immigration and Nationality Act.
10. Defendant Dennis Riordan is the District Director of the United States Citizenship and Immigration Services in Boston, Massachusetts charged with the

authority over implementation of benefits under the Immigration and Nationality Act in the Boston District Office. The Hartford, Connecticut office is a sub-office of the Boston, Massachusetts office.

11. Defendant, the United States Department of Homeland Security, is a Federal agency of the United States government that is mandated under, 8 USC §1103(a) to supervise, implement, and enforce the Immigration and Nationality Act, including Applications for Change of Status and Applications for Employment Authorization.

12. Defendant United States Citizenship and Immigration Services (hereinafter, “USCIS”) is an agency involved in the acts challenged in this action, and is a subordinate agency within the Defendant United States Department of Homeland Security.

FACTUAL ALLEGATIONS

13. Plaintiffs are a married couple who have already navigated their way through much of the immigration process to obtain resident status for Mrs. Murakami. The couple was married on May 10, 1999. Shortly after their marriage, Mr. Kyriakides petitioned for his wife’s permanent residence. Mrs. Murakami was granted Conditional Resident status in April 2001.

14. As required by 8 CFR §216.4, in a timely manner, the couple applied to remove the condition on residence on January 23, 2003 by submitting an I-751 Petition to Remove Conditions on Residence to the Vermont Service Center.

15. In accordance with, and pursuant to, the regulations governing 8 USC § 216.5, et seq., Plaintiffs paid the fees necessary to file their application.
16. The USCIS duly accepted the fee paid by Plaintiffs.
17. Plaintiff submitted to the USCIS all documentation required by regulation and by statute to be submitted as part of the application procedure.
18. On January 28, 2003, the Service Center confirmed receipt of the application (Exhibit "A").
19. 8 CFR §216.4(c) states that the USCIS *shall* adjudicate the petition within 90 days of the date of the interview, unless the interview is waived.
20. The couple patiently waited for over a year before they sought an explanation for the delay in their case. During October 2004, the couple began to inquire into the status of their pending application by calling the USCIS Customer Service Number.
21. The couple was told that they would have to call the Customer Service Number at least four times, waiting at least 30 days between phone calls. On the fourth phone call, if no action had been taken, the caller would be transferred to a USCIS officer who would then be able to give them some information about their case. The couple and their attorney called at least eight times before the agents answering the telephone acknowledged, based on call logs, that four phone calls had been made. During the final

call, the couple's attorney was transferred to a USCIS officer who was not able to offer any assistance, or provide any more information than was already apparent.

22. Plaintiffs submitted to the USCIS documentation sufficient to enable the USCIS to process their application, and adjudicate said application.

23. To date, the USCIS has failed and refused to act on the Plaintiffs' I-751 Petition to Remove Conditions on Residence.

24. Plaintiffs' I-751 application has now remained unadjudicated for over two year.

25. The failure to conduct reasonably timely processing and adjudication of the applications is due to a national policy of delaying all such applications. The subject delays are not caused by any factors unique to this plaintiff.

26. Defendants' refusal to act in this case is, as a matter of law, arbitrary and not in accordance with the law. Defendants willfully, and unreasonably, have delayed in and have refused to, adjudicate Plaintiffs application. Defendants' refusal to act has deprived Plaintiffs of the right to a decision regarding Mrs. Murakami's status, and the peace of mind to which Plaintiffs are entitled.

27. The Defendants, in violation of the Administrative Procedures Act, 5 USC §701 et seq., are unlawfully withholding or unreasonably delaying action on Plaintiffs' application and have failed to carry out the adjudicative functions delegated to them by

law with regard to Plaintiffs' case.

28. Despite the clear mandate of 5 USC Section 551 et seq., and 8 CFR §216.4(c), requiring the USCIS to process the applications, and adjudicate the applications within a reasonable time, the USCIS has failed and/or refused to do so.

29. Defendant USCIS's duty to process Plaintiff's applications, and adjudicate said applications "within a reasonable time" is a non-discretionary duty mandated by federal law.

30. Defendant USCIS's conduct in failing to process Plaintiffs' applications, and adjudicate said applications in a reasonably timely manner have caused unnecessary and injurious delays to Plaintiff, in violation of his rights as alleged herein.

31. Plaintiff has exhausted all administrative remedies available and has determined that no adequate remedy exists.

STATUTORY AND REGULATORY FRAMEWORK

32. Pursuant to 8 CFR §216.4: Joint petition to remove conditional basis of lawful permanent resident status for alien spouse;

(a) Filing the petition -- (1) General procedures. Within the 90-day period immediately preceding the second anniversary of the date on which the alien obtained permanent residence, the alien and the alien's spouse who filed the original immigrant visa petition or fiance/fiancee petition through

which the alien obtained permanent residence must file a Petition to Remove the Conditions on Residence (Form I-751) with the Service. The petition shall be filed within this time period regardless of the amount of physical presence which the alien has accumulated in the United States. Before Form I-751 may be considered as properly filed, it must be accompanied by the fee required under § 103.7(b) of this chapter and by documentation as described in paragraph (a)(5) of this section, and it must be properly signed by the alien and the alien's spouse. If the joint petition cannot be filed due to the termination of the marriage through annulment, divorce, or the death of the petitioning spouse, or if the petitioning spouse refuses to join in the filing of the petition, the conditional permanent resident may apply for a waiver of the requirement to file the joint petition in accordance with the provisions of § 216.5 of this part. Upon receipt of a properly filed Form I-751, the alien's conditional permanent resident status shall be extended automatically, if necessary, until such time as the director has adjudicated the petition.

33. Under the same title, 8 USC § 216.4(c):

(c) Adjudication of petition. The director shall adjudicate the petition within 90 days of the date of the interview, unless the interview is waived in accordance with paragraph (b)(1) of this section.

EXHAUSTION OF REMEDIES

34. Plaintiffs have exhausted their administrative remedies. Plaintiffs have made numerous inquiries in an attempt to secure adjudication of their application, all to no avail. Accordingly, Plaintiffs have been forced to retain the services of an attorney to pursue the instant action.

CLAIM FOR RELIEF

35. Plaintiffs realleges paragraphs 1 through 34 as if fully set forth herein. Plaintiffs

are entitled to an order in the nature of mandamus to compel Defendants to promulgate the regulations, to process Plaintiffs' application, and, to adjudicate Plaintiffs' Petition to Remove Conditions on Residence in a reasonably timely manner.

36. Plaintiffs are entitled to injunctive relief to prevent the USCIS from engaging in a willful failure to process Plaintiffs' application, and to require the USCIS to adjudicate their application in a reasonably timely manner.

37. Defendants willfully, and unreasonably, delayed and refused to adjudicate Plaintiffs' Petition to Remove Conditions on Residence, thereby depriving Plaintiffs of the ability to have peace of mind as to Mrs. Murakami's status, to which Plaintiffs are entitled under federal law.

38. Defendants owe Plaintiffs the duty to act upon their application, and have unreasonably failed to perform that duty. Plaintiffs has provided all relevant information and facts on their case.

39. Compelling factors genuinely exist in the Plaintiffs' case, as they has been deprived of the right to feel secure in Mrs. Murakami's status in the United States, a benefit to which she has proven eligibility.

40. Plaintiffs have exhausted any administrative remedies that may exist. No other remedy exists for Plaintiffs to resolve Defendant's delay.

41. Plaintiffs are eligible for payment of attorney's fees, related expenses, and costs pursuant to the Equal Access to Justice Act, 28 USC Section 2412.

PRAYER FOR RELIEF

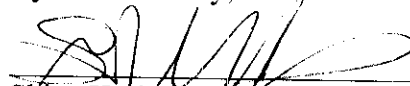
WHEREFORE, in view of the arguments and authority noted herein, Plaintiffs respectfully requests that the Defendants be cited to appear herein and that, upon due consideration, the Court enter an order:

- (a) requiring Defendants to adjudicate Plaintiffs' Petition to Remove Conditions on Residence;
- (b) awarding Plaintiff reasonable attorney's fees; and
- (c) granting such other relief at law and in equity as justice may require.

Respectfully submitted,
Plaintiffs,

**HISAYO MURAKAMI, and
CHRISTOPHER KYRIAKIDES,**

By their attorney,



Shiva Karimi, Esq.

KARIMI & HOMSY, P.C.

268 Summer Street

Boston, Massachusetts 02210-1108

Tel: (617) 292-3636

Fax: (617) 292-0019

BBO No. 642332

Dated: April 11, 2005

LIST OF ATTACHMENTS

<u>Exhibit</u>	<u>Description</u>
A	I-797 Receipt Notice for I-751 Application to Remove Conditional Residential Status

EXHIBIT “A”



Notice of Action		RECEIPT NUMBER EAC-03-119-00085	NOTICE DATE January 28, 2003	PAGE 1 of 1
CASE TYPE I751 Application to remove conditional residential status			RECEIPT DATE January 23, 2003	
PETITIONER HISAYO MURAKAMI			FILE NUMBER A 78382238	
BENEFICIARY			FILE NUMBER	
H. MURAKAMI 10 SCOTTFIELD RD 13 ALLSTON MA 02134			Receipt Notice RECEIVED \$145.00 IN THE FORM OF A MONEY ORDER AND	

***** The above receipt number MUST accompany all inquiries! *****

RECEIVED \$145.00 IN THE FORM OF MONEY ORDER AND
 FROM: HISAYO MURAKAMI

Your alien card is extended 1 year-employment & travel authorized. Processing
 Your form will require a minimum of 30 days. If you have not heard from us within
 12 months, then may contact this office

You will be notified separately about other applications or petitions you file.
 Please save this notice for your records.
 Please enclose a copy of it if you have to write to us about this case,
 or if you file another application based on this decision,
 If you have any questions concerning your case, please call at: (802)-527-4913
 Our address is:

Vermont Service Center
 75 Lower Welden St.
 St. Albans, VT 05479-0001

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Hisayo Murakami and Christopher Kyriakides

(b) County of Residence of First Listed Plaintiff Hartford County, CT
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hiva Karimi, Esq., Karimi & Homsy, PC
68 Summer Street, Lower Level, Boston, MA 02210-1108

DEFENDANTS

Alberto González, as attorney general, et al.

County of Residence of First Listed Defendant Suffolk County, MA
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

U.S. Attorney, U.S. Attorney General, and District Counsel for U.S.
Department of Homeland Security

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) SOCIAL SECURITY <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC §1361, 28 USC §1331, 28 USC §2201, 5 USC §702, 8 USC §1329, 5 USC §504, 28 USC §2412

Brief description of cause:

Action to compel US Government to adjudicate Plaintiff's immigration applications

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

04/11/2005

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS1. Title of case (name of first party on each side only) Hisayo Murakami, et al. v. Alberto Gonzales, et al.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

N/A

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☒YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES ☐ NO ☒A. If yes, in which division do all of the non-governmental parties reside?Eastern Division ☐ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☒ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Shiva Karimi, Esq., Karimi & Homsy, PCADDRESS 268 Summer Street, Boston, Massachusetts 02210-1108TELEPHONE NO. 617 292-3636 Fax: 617 292-0019